

EXHIBIT 1
DATE 1/15/09
HB 36

Rep. Ken Peterson Opens the Door to Understanding the Castle Doctrine

Contributed by Representative Ken Peterson

HB 36 is a so called "Castle Doctrine" bill. We need to review it carefully to see if it truly meets the definition of the "Castle Doctrine". The "Castle Doctrine" is that you have the right to protect your castle from all intruders including the use of deadly force to repel the intruders. In addition you are not required to retreat first before taking action.

The intention of the bill is good, if it is really offered for the purpose of adopting the "Castle Doctrine" in the State of Montana. I have talked to the Sponsor and he told me that he told the drafter that he wanted to codify the "Castle Doctrine" and HB 36 was what was provided to him. However, there are some real deficiencies if it is examined closely.

First of all, it is restricted to an occupied structure. The title is limited to an occupied structure. The argument could be made that if the structure is vacant you have no right to protect it and claim the "Castle Doctrine".

In order to be a pure "Castle Doctrine" it needs to extend to the house and the curtilage. The legal definition of curtilage is the house, outbuildings and the grounds normally used for domestic purposes on which they all sit. HB 36 only extends to the occupied structure.

Looking particularly at line 18, HB 36 says that you may only use force if the person or persons trying to break in or assault the premises is attempting it in a violent, riotous or tumultuous manner. I would be more concerned with someone who was sneaking up by stealth or under cover of darkness.

Further, the person protecting his or her property must reasonably believe that the use of force is necessary. If the Courts or someone else believes that the use of force was not reasonable then the person protecting his or her property may be liable.

If the bill is amended to address the foregoing then it would be a reasonable "Castle Doctrine" bill.

January 9th, 2009 in [Uncategorized](#) | tags: [Rep. Ken Peterson](#), [Right to Bear Arms](#) | [2 Comments](#)